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PAGES: 1-295  
EXHIBITS: 1-15

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

6 \*  
7 SHEILA J. PORTER, \*  
7 Plaintiff \*  
8 -vs- \* Civil Action  
8 ANDREA CABRAL; SUFFOLK COUNTY \* No. 04-11935-DPW  
9 SHERIFF'S DEPARTMENT; SUFFOLK \*  
9 COUNTY and CORRECTIONAL MEDICAL \*  
10 SERVICES, INC., \*  
10 Defendants \*  
11 \*  
12  
13

14 DEPOSITION OF ANN MACK, a witness  
14 called on behalf of the Plaintiff, in the  
15 above-captioned matter, said deposition being  
15 taken pursuant to the Federal Rules of  
16 Civil Procedure, before Patricia M.  
16 McLaughlin, a Certified Shorthand Reporter and  
17 Notary Public in and for the Commonwealth of  
17 Massachusetts, at the offices of Goodwin Procter  
18 LLP, Exchange Place, Boston, Massachusetts, on  
18 Tuesday, May 3, 2005, commencing at 10:05 a.m.

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21

22 McLAUGHLIN & ASSOCIATES COURT REPORTERS  
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1 Q Do you know how many facilities  
2 approximately?

3 A I think we have nine statewide prison systems  
4 and 50 jails. It changes. We pick up  
5 contracts, and we lose contracts.

6 Q Does CMS currently service correctional  
7 facilities in Massachusetts?

8 A Yes.

9 Q Which ones are those?

10 A Essex County Correctional Facility.

11 Q Any in New England besides Massachusetts?

12 A The State of Maine, the Maine Department of  
13 Corrections.

14 Q Any others in Maine?

15 A Cumberland County in Maine, Portland, Maine.

16 Q Any others in New England?

17 A No.

18 Q In the last, say, five years, what additional  
19 prison facilities in Massachusetts has CMS  
20 provided services for?

21 A The prison systems would be the Massachusetts  
22 Department of Corrections and Vermont.

23 Q Which specific facilities within the  
24 Department of Corrections in Massachusetts?

1 A All of the state prisons within the  
2 Massachusetts Department of Corrections.

3 Q How many of them are there?

4 A Approximately 20. They closed a couple.

5 Q So CMS has provided services for all 20 or so  
6 facilities within the Massachusetts  
7 Department of Corrections system?

8 A Right, the prisons.

9 Q Jails as well besides state correctional  
10 facilities?

11 A The jails would have been Essex County. We  
12 had a contract with Suffolk County, and we  
13 previously had a contract with Franklin  
14 County, a small jail. In New England, we had  
15 the statewide prison system in Vermont.

16 Q You report to work in Middleton; is that  
17 right?

18 A Yes.

19 Q How many people work in the Middleton office?

20 A Two.

21 Q You and somebody else?

22 A Yes.

23 Q Who is the other employee?

24 A Bonnie Roberts, Bonnie Roberts Clark.

1 Q What's her position?

2 A She's an administrative coordinator.

3 Q So she's not somebody you would have spoken  
4 to regarding the substance of your testimony  
5 today?

6 A I would have talked to her about -- I talked  
7 to her about specific details around the  
8 payroll system. She's real familiar with the  
9 T3 system, the computerized payroll system.  
10 She does training for that in the field.  
11 When we have new facilities or new staff,  
12 she'll provide training.

13 Q How long has Miss Roberts Clark been with  
14 CMS?

15 A I believe it's ten years.

16 Q So are most of CMS's employees in the field,  
17 so to speak, rather than at your corporate  
18 office? When I say in the field, I mean at  
19 the various correctional facilities.

20 A The majority of the CMS staff work in various  
21 states inside the correctional facilities,  
22 yes.

23 Q How does it come to pass that CMS begins  
24 providing medical services for a correctional

1 facility?

2 A The correctional facility will put out a  
3 Request For Proposal, an RFP, and various  
4 vendors will respond. You submit a proposal.  
5 There is a selection committee. A decision  
6 is made to award a contract, and a contract  
7 award is made.

8 Q So it's a common practice for prisons to  
9 subcontract the medical treatment or medical  
10 facilities in their prison?

11 A I'm not sure what the percentage of statewide  
12 prison systems are that privatize their  
13 medical services programs. Maybe 40 percent,  
14 and that's a guess.

15 Q So the Request for Proposal is put out, and  
16 what does CMS do in response to that Request  
17 for Proposal?

18 A We have a sales department that would begin  
19 gathering documentation to prepare putting a  
20 proposal together. They'll have a bid  
21 meeting, and various members from sales and  
22 operations will attend that bid meeting. And  
23 that's the opportunity where you have to ask  
24 questions, and then there will be a tour of

1 the facility or facilities, put the documents  
2 together and develop your proposal.

3 Q And the documents are the proposal or the  
4 bid?

5 A Yes, and any required documents per the RFP.

6 Q Could you describe CMS's employment  
7 relationship with a prison once you receive a  
8 contract with a particular prison?

9 MS. HARVEY: Objection. Go ahead.

10 A We don't have an employment relationship with  
11 a county or a state jurisdiction. It's  
12 purely a contract to provide services. Staff  
13 that function under our contract are  
14 employees or independent contractors of CMS,  
15 and there is no employee relationship with  
16 the county or state Department of  
17 Corrections.

18 Q Does the prison have any say in terms of who  
19 is hired to fill particular positions?

20 A Not often. From time to time, the management  
21 positions, such as the administrator or the  
22 regional medical director, they would like to  
23 be -- they request to have, not an interview,  
24 but to meet that person and get a feel for

1                   their background and their experience and see  
2                   if there will be a fit. It's an unusual  
3                   environment. It's not for everybody.

4                   Q    CMS comes in and says here is who we suggest  
5                   will be our team, so to speak?

6                   A    Most often, we don't, but from time to time,  
7                   our clients will be involved in at least  
8                   reviewing who we propose as management staff.

9                   Q    Does the prison have any say as to whether or  
10                   not particular individuals are acceptable or  
11                   not?

12                  A    They have say most often around credentials.

13                  Q    What do you mean by that?

14                  A    If we are looking at a physician who is going  
15                  to work at the facility to provide primary  
16                  care, they will want someone who is board  
17                  certified or board eligible in internal  
18                  medicine, family medicine, emergency medicine  
19                  and not cardiology, something to do with a  
20                  specific separate board.

21                  Q    The individuals that CMS provides for these  
22                  prisons, they go to work in a prison  
23                  infirmary? Is that how it's categorized?

24                  A    It depends on the site. It's an area within

3 Q Fair enough. Could you describe the  
4 organizational structure within that area  
5 where the health services are provided?

6 . Let's talk in particular about Suffolk County  
7 just to narrow things down for.

8       A     At Suffolk County, the organizational  
9                 structure would be the health services  
10                administrator, and that's the lead of the  
11                health services team. There is also a site  
12                medical director, a site director of mental  
13                health, and those three are the members of  
14                the team that are responsible to manage the  
15                services.

16 Q What does the health services administrator  
17 do?

18 A Her role is to monitor the day-to-day  
19 operations of the facility in the health  
20 services department to ensure that quality  
21 care is being provided, to ensure that access  
22 to care is happening, to ensure that all the  
23 staff that we bring on board are licensed and  
24 qualified to provide the services that we

1 hire them for. They're responsible to  
2 communicate with the client on a day-to-day  
3 basis regarding concerns related to health  
4 services or day-to-day operations.

5 Q How about the site medical director, what's  
6 that individual's job responsibilities?

7 A Site medical director is basically the health  
8 authority that makes clinical decisions  
9 around the services that are being provided,  
10 and that person works in conjunction with the  
11 health service administrator to make sure  
12 that the medical services that an inmate  
13 population requires is being provided.

14 Q How about the site director of mental health?

15 A They are over the mental health department  
16 and is responsible to ensure that the mental  
17 health services that we are providing in that  
18 facility are consistent with what we are  
19 required to provide. We provide services  
20 consistent with the standards of the National  
21 Commission on Correctional Healthcare, and  
22 that facility is accredited by CMS through  
23 the National Commission on Correctional  
24 Healthcare.

1 Q Do all three of these individuals report to  
2 CMS corporate, if you will?

3 A The medical director has an indirect to our  
4 regional medical director. The health  
5 service administrator has a direct report to  
6 the regional jail manager, and the regional  
7 jail manager would report to me.

8 Q What other CMS employees -- job titles now,  
9 not actual individuals yet -- would have been  
10 working in the Suffolk County House of  
11 Corrections during the term of your contract  
12 with them?

13 A Position titles?

14 Q Sure.

15 A Physician assistant, nurse practitioner,  
16 staff physician, dentist, dental assistant,  
17 medical records clerks, phlebotomists, social  
18 workers, discharge planners, mental health  
19 liaison.

20 Q Approximately how many individuals working  
21 for CMS would have been in the prison?

22 A There, I believe there were about 45, maybe  
23 50, which would be either employees or  
24 independent contractors or a subcontractor.

1 Q Who determines whether an individual is an  
2 employee, an independent contractor or a  
3 subcontractor?

4 A It depends on -- that's a hiring status.  
5 Physicians generally are independent  
6 contractors, but if they are medical  
7 directors, then they are employees. In a  
8 subcontract, a subcontractor would be someone  
9 that provides more of a program, like a  
10 dental subcontractor. An employee would be a  
11 direct employee.

12 Q When did CMS first start providing medical  
13 services to the Suffolk County House of  
14 Corrections?

15 A I think it was in July of 2001.

16 Q How did that come about?

17 A I believe it was in a response for to Request  
18 For Proposals.

19 Q So Suffolk sent out a Request for Proposal?

20 A Yes.

21 Q And CMS submitted a bid?

22 A Right.

23 Q And presumably, that bid was accepted?

24 A Right.

1 Q But not hired to work for CMS as a general  
2 matter but rather to work specifically in  
3 that prison?

4 A No, she was employed by CMS and specifically  
5 to work for CMS in the health services unit  
6 at that jail.

7 Q Was she a full-time employee?

8 A I believe she was full time, doing four  
9 ten-hour days.

10 MR. SCHUMACHER: Let the record reflect  
11 that I'm asking Mrs. Porter not to indicate  
12 anything.

13 THE WITNESS: She was full time.

14 Q What was her salary?

15 A Most nurse practitioners at that site or  
16 around this region made probably around \$35,  
17 \$33 an hour.

18 Q Did she receive full benefits?

19 A Yes, she would have as a full-time employee.

20 Q What did those benefits generally include?

21 A Health insurance, dental insurance. She  
22 would have a co-pay to both of those, dental  
23 and vision. 401(k) opportunity. Then her  
24 other benefits included pay time off days.

1 Q Was she required to undergo a background  
2 check?

3 A All correctional facilities require anyone  
4 entering a facility, whether or not it's an  
5 employee of ours or a vendor that we're  
6 bringing in that's going to read X rays,  
7 services or whatever, to complete a  
8 background check.

9 Q What is your understanding of what goes into  
10 a background check?

11 A Every jurisdiction does it differently. I'm  
12 not sure how indepth Suffolk County's  
13 background check is. It wouldn't be  
14 something that we would be involved in.

15 Q The prison performs the background check --

16 A Right.

17 Q -- rather than CMS?

18 A The jail.

19 Q Thank you. Were you personally involved in  
20 Sheila's hiring this last time? Excuse me.  
21 Were you personally involved in Sheila's  
22 hiring when CMS received the Suffolk County  
23 contract?

24 A I don't remember.

1 Suffolk County House of Corrections?

2           A    The medical unit where the bulk of the health  
3                    services is provided out of is pretty much  
4                    located centrally within that facility on the  
5                    second floor.

6 Q Who did Mrs. Porter or to?

7 A She reported to the health service  
8 administrator.

9 Q Who was that during her tenure with CMS, say  
10 starting in the beginning of 2001?

11 A I think most of that time Donna Jurdak was  
12 the administrator at that facility.

13 Q Was there anyone else that was the health  
14 services administrator at that facility  
15 during this time? The period of time we  
16 talking about is the beginning of 2001  
17 June of 2003.

18 A I'm not sure.

19 Q You know Mrs. Jurdak was, and there may have  
20 been other individuals as well?

21 A This is a small industry, and a lot of us  
22 have all worked together. And a lot us  
23 worked with Correctional Healthcare  
24 Solutions. So it's not real clear to me

1                   health services administrator?

2   A    Yeah, and to the medical director on clinical  
3                   issues.

4   Q    For medical issues, she would have reported  
5                   to the medical director, and for personnel or  
6                   administrative-type matters, she would have  
7                   reported to the health service administrator;  
8                   is that right?

9   A    Yes.

10   Q    And the medical director at the time, who was  
11                   it for CMS?

12   A    At what time?

13   Q    Between the beginning of 2001 and 2003.

14   A    I believe for that entire period it was  
15                   Dr. Carl Singletary.

16   Q    Is Dr. Singletary still employed with CMS?

17   A    No.

18   Q    Do you know when he left?

19   A    I'd say approximately eight months ago.

20   Q    What were the circumstances of his departure?

21   A    He resigned. He took a position elsewhere.

22   Q    Do you know why he resigned?

23   A    No.

24   Q    Do you know where he's working now?

1 A I don't.

2 Q Is he working at U. Mass. Medical in  
3 Worcester?

4 A He may be.

5 MR. SCHUMACHER: This may be a good time  
6 for a five-minute break.

7 (Whereupon, a brief recess was held.)

8 BY MR. SCHUMACHER:

9 Q Miss Mack, you talked a little bit about this  
10 before. How would you describe Miss Porter's  
11 work performance for CMS?

12 A Sheila did a great job clinically. She had  
13 exceptional clinical skills. She worked well  
14 as a team member at that facility. I don't  
15 believe we had any problems with her  
16 performance whatsoever.

17 Q Did she receive the performance reviews that  
18 you described earlier?

19 A The health service administrator would have  
20 been responsible to do her performance  
21 evaluation, and in that, she would have also  
22 received a merit increase, an annual merit  
23 increase.

24 Q Do you know whether or not Mrs. Porter was

1                   reviewed while she was at CMS?

2           A    It would be the expectation that she would  
3                   have. Whether or not the administrator did  
4                   that, I don't know that.

5           Q    Is it your testimony that it's entirely up to  
6                   the health services administrator whether or  
7                   not to review an employee?

8           A    It is their requirement to perform an  
9                   evaluation of staff prior to submitting a  
10                  request for a merit increase. Sheila  
11                  received merit increases showing good  
12                  performance.

13           Q    What does that indicate to you then?

14           A    It would be my understanding that -- she  
15                  reported directly to Donna Jurdak -- that if  
16                  she received a 3 percent merit increase, that  
17                  she had good performance in her job duties at  
18                  that site.

19           Q    And the fact that she received her merit  
20                  increase, does that indicate to you that she  
21                  received a performance review?

22           A    Not necessarily, although a performance  
23                  review was required to be performed on all  
24                  staff by their supervisor.

1 employee's signature, Sheila J. Porter?

2 A Yes.

3 Q Do you recognize the name below that?

4 A Connie Surpitski.

5 Q Who is Miss Surpitski?

6 A . She is the health service administrator at  
7 Essex County.

8 Q And Essex County is the facility where  
9 Mrs. Porter was rehired to work in in  
0 approximately October, 2003; is that right?

11 A Yes.

12 Q So does this indicate to you that CMS  
13 reimbursed Mrs. Porter for her travel  
14 expenses for this conference?

15 A Yes.

16 Q And you're aware that Mrs. Porter attended  
17 this conference even though she had been at  
18 the time terminated by CMS --

19 MS. HARVEY: Objection.

20 Q -- is that right?

21 A She was working for CMS obviously at the time  
22 that she attended this conference. We  
23 generously reimbursed her to attend.

24 Q Well, the date that the form was submitted is

1 Q It was before the September, '03,  
2 communication; is that right?

3 A Yes.

4 Q Now, at some point, Mrs. Porter was  
5 terminated from CMS, right?

6 A I believe she's still currently working for  
7 us.

8 Q But at some point she was terminated from  
9 CMS, right?

10 A In June of '03, yes.

11 Q What were the circumstances surrounding that  
12 termination?

13 A Sheila was barred from the correctional  
14 facility from the county. Sheila was denied  
15 access to the facility. Based on that, we  
16 had no position for Sheila.

17 Q Why was she barred from the facility?

18 A We don't know the specifics around why she  
19 was barred. I wasn't in attendance in the  
20 meeting. Donna Jurdak was.

21 Q When you say we, who are you referring to?

22 A CMS.

23 Q So your testimony is CMS does not know why  
24 Sheila Porter was barred from the facility?

1 Q Did CMS talk to -- did CMS conduct an  
2 internal investigation as to these  
3 allegations?

4 A No.

5 Q Did CMS talk to any of the employees on site  
6 within the medical facility at the House of  
7 Corrections concerning these allegations?

8 A No, I don't think so.

9 Q Was Dr. Singletary asked if he knew what had  
10 happened?

11 A Not from me.

12 Q By CMS?

13 A Possibly by Donna. I don't know what Donna's  
14 communications were at the site.

15 Q But CMS didn't launch a formal internal  
16 investigation as to these allegations, right?

17 A No.

18 Q Now, at some point subsequent to receiving  
19 this information, CMS had made the decision  
20 to terminate Mrs. Porter, right?

21 A That's correct.

22 Q I think you testified that it was made on the  
23 same day; is that right?

24 A It might have been the following day.